

2005 Biennial Report

Kentucky Office of the Attorney General



*Gregory D. Stumbo
Attorney General
Commonwealth of Kentucky*

Dear Fellow Kentuckians,

The past eighteen months have been some of the most satisfying of my professional life. I am pleased to report that during 2004, and the first six months of 2005, we reached many of the goals that we set to protect you from unscrupulous business practices, make your government more open and accessible, and curtail the drug epidemic that is tearing away at the fiber of so many of our communities and families. I am particularly proud of the establishment of the Kentucky Bureau of Investigation and its innovative work to crack down on drug crime.

In this report, we outline the accomplishments of the Office of the Attorney General during the first 18 months of my administration. Although there is still much work to be done, we have accomplished a great deal since I took office. It is my intention to build upon our success.

On behalf of everyone in the Office of the Attorney General, it has been a pleasure to serve you.

Sincerely,

 Gregory D. Stumbo

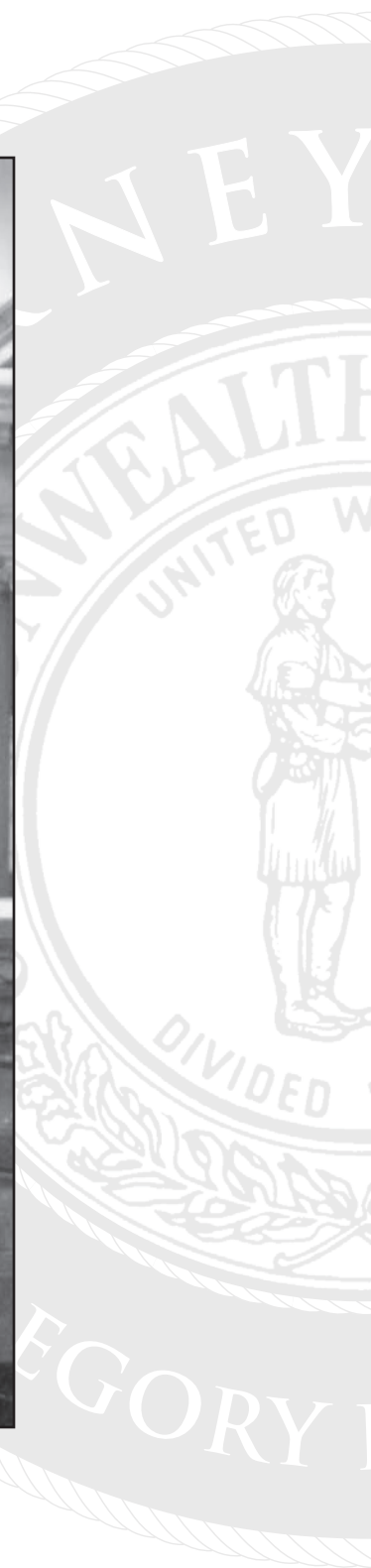


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Biographical Year in Review

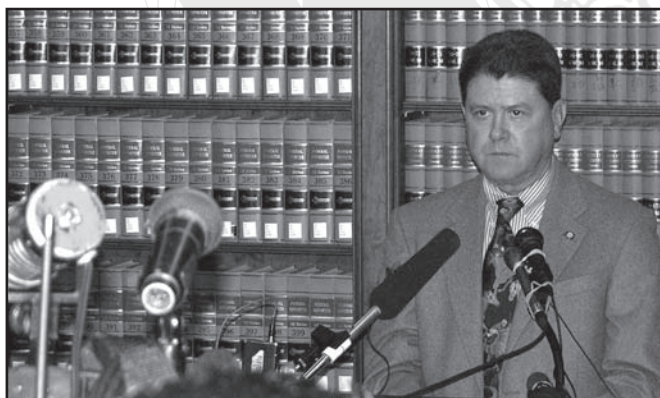
Long-time Kentucky legislative leader Gregory D. Stumbo was honored to be elected to serve as the Attorney General of the Commonwealth in November 2003. Prior to being elected Attorney General, Stumbo served 12 terms as a State Representative and was Kentucky's longest-serving House Majority Floor Leader. General Stumbo was the only Kentucky legislator in state history with 19 years experience in legislative leadership. When first elected House Majority Floor Leader in 1985, Stumbo was the youngest Majority Floor Leader elected in the nation. In 2003, he was asked to serve an unprecedented 10th term in that post.

As a candidate for Attorney General, Stumbo promised that, if elected, he would "make pushers pay" by focusing on the growing epidemic of drug use in the state. Upon taking office as Attorney General, Stumbo supported KASPER legislation, requiring the Cabinet for Health and Family Services to issue quarterly trend reports to aid law enforcement in detecting patterns of possible prescription drug abuse or diversion. KASPER is a nationally recognized prescription drug reporting system that enables doctors and law enforcement to control misuse of drugs. Stumbo also supported price gouging legislation capping price increases during a declared national or local emergency at 10% of the price charged for the goods or services immediately prior to the emergency. Both pieces of legislation were signed into law in April 2004.

When gasoline prices skyrocketed as a result of Hurricane Katrina in August 2005, General Stumbo called upon the Governor to sign a state of emergency order. That order allowed for the implementation of the price gouging statute and allowed investigators to enforce price gouging protections.

In April 2004, Stumbo was proud to announce that two central Kentucky individuals investigated by his office for the illegal purchase and possession of Schedule II controlled substances through the Internet, entered guilty pleas. Since then, KBI agents have seized hundreds of drug shipments entering Kentucky from out of state, including an August 2005 seizure in which agents took more than 220 drug shipments off the streets. The packages were from unlicensed pharmacies from across the United States and contained highly addictive drugs destined for towns across Kentucky. Legislation passed in 2005 by the General Assembly forbids the sale and shipment of drugs by unlicensed Internet pharmacies.

In May, Attorney General Greg Stumbo filed a petition in Franklin Circuit Court seeking a declaration of rights regarding the state budget impasse. The purpose of the action was to ensure the lawful and orderly continuation of government services to the citizens of the Commonwealth. Stumbo also announced a settlement of Medicaid Fraud and Consumer Protection Act claims against pharmaceutical drug manufacturer Parke-Davis, a division of Warner-Lambert, bringing the total in Medicaid state funds recovered by the Office of the Attorney General during the first five months of 2004 to more than \$4 million.



Attorney General Stumbo addresses reporters during a press conference.

In July 2004, Stumbo announced the creation of a toll-free Medicaid tip line for Kentucky (1-877-ABUSE-TIP). The new tip line allows citizens, family members and health care professionals to report fraudulent Medicaid provider billing and instances of patient abuse, neglect or exploitation in Medicaid-funded facilities.

In August, the Attorney General announced that his Office will provide free legal services to all present-day active duty military in Kentucky to ensure their rights under a federal law, the Service Members' Civil Relief Act (which replaces the Soldiers and Sailors Civil Relief Act of 1940). The law provides Kentucky's service members greater ability to manage personal, financial and legal obligations. A guidebook explaining the law's protections was distributed to all of Kentucky's judges by Stumbo and Chief Justice Joseph Lambert. Also in August, Stumbo established a Blue Ribbon Commission to recommend increases in funding and staffing levels for Kentucky prosecutors. The Commission has prepared a comprehensive report regarding challenges facing Kentucky's prosecutors.



In September, Stumbo created the Kentucky Bureau of Investigation (KBI), the first investigative unit of its kind in the Commonwealth. The KBI is designed to achieve a consolidation of investigative staff into a single unit to promote the efficient management and coordination of law enforcement operations and training within the Office of the Attorney General (OAG). The responsibilities of the KBI include working to combat the illegal drug trade, fighting public corruption and recovering millions of dollars lost to Medicaid fraud. The KBI's team of sworn officers, drawn from members of the state police, military police, FBI and county and municipal police forces, has in excess of 700 years of law enforcement service. The KBI has been very successful in its investigative efforts since inception.

Attorney General Stumbo sued 41 major drug manufacturers in November 2004, accusing them of defrauding the Medicaid program and consumers out of millions of dollars by inflating the prices of their prescription drugs. The suit states that the drug companies cheated the Medicaid program by falsely reporting the drug prices that are used to set reimbursement rates, thus cheating the Medicaid program and Kentucky citizens out of hundreds of millions of dollars. Such an abuse of a system designed to aid the citizens of the Commonwealth will not be tolerated, and this lawsuit continues to be a major priority of the Stumbo administration.

In keeping with a campaign promise to increase access to the Office of the Attorney General throughout the Commonwealth, Stumbo announced in December the opening of an East Kentucky branch office. The Prestonsburg office brought the total to four field offices opened by Stumbo. The other offices are located in Benton, Maysville and Shively. Also in December, Stumbo filed a Consumer Protection lawsuit against national used car dealership franchisor, J.D. Byrider, Inc. and the Louisville J.D. Byrider franchise. The suit alleges that the local franchise engaged in multiple violations of the Kentucky Consumer Protection Act, resulting in significant financial harm to Kentucky consumers.

In January of 2005, General Stumbo's Office filed a petition in the Supreme Court of North Carolina asking for an expedited review of a 2004 ruling that the federal "tobacco quota buyout" entitles the

tobacco companies to an offset against their 2004 payments under the National Tobacco Grower Settlement Trust Agreement. In August 2005, Stumbo prevailed in forcing tobacco companies to pay Kentucky money owed under the tobacco Master Settlement Agreement (MSA). The North Carolina Supreme Court unanimously found in favor of Kentucky and 13 other tobacco-growing states by requiring the major tobacco companies to make their \$424 million 2004 payment under the terms of the National Tobacco Grower Trust Settlement Agreement.

In February, Stumbo drafted legislation, later passed by the General Assembly, to halt the unregulated distribution of drugs to the public through the Internet. This legislation incorporates the best practices from other state laws designed to control Internet pharmacies by requiring sellers of prescription medication to obtain a permit from the Board of Pharmacy, maintain a toll-free number where patients can consult with a qualified pharmacist, comply with the KASPER monitoring system and become certified as a "Verified Internet Pharmacy Practice Site." Today, many unlicensed pharmacies refuse to ship to Kentucky due to its penalties. Stumbo's initiative ensures that prescriptions will be filled by legitimate, reputable pharmacies, while pushers will face felonies for selling drugs illegally. The KBI actively enforces this law.

In fact, in August 2005, KBI agents seized 58 drug shipments from a commercial shipping hub in Lexington. Seven unlicensed pharmacies based in Florida, Pennsylvania, North Carolina, Colorado and Maryland sent the shipments. Days earlier, agents also seized 163 drug shipments containing 10,000 hydrocodone tablets from the hub, which worked in cooperation with investigators.

In March, the Attorney General's Environmental Protection Branch reached a \$325,000 settlement with DART Container Corporation, a Michigan-based company which owns and operates a facility in Horse Cave that manufactures plastic and foam products. The settlement came after DART was observed by the Environmental and Public Protection Agency piping discharge from a production line into a sinkhole that ran into Green River, near Mammoth Cave.

In April, Stumbo proposed legislation that would improve protections for children under Megan's Law. The legislation would reorganize and consolidate all sections of the sex offender registration and notification statutes created and amended over the last decade. House Bill 455, developed by Attorney General Greg Stumbo's Criminal Appeals Division, would ensure that Kentucky's version of Megan's Law (KRS 17.500) provides the maximum protection for citizens of the Commonwealth. The proposed bill is not yet law but Stumbo continues working to ensure passage of this much needed legislation in the 2006 session with the proposal of the Community Notification and Child Protection Act.

The KBI's Medicaid Fraud and Abuse Control Division continued its crackdown on abuse in June of 2005 with the indictment of a caretaker who struck a mentally retarded patient. In another case handled by the KBI's Medicaid Division, a caretaker pled guilty to stealing prescription medication prescribed for residents at a long-term care facility in Louisville. Information regarding such abuse continues to come into the Attorney General's abuse tip line.

As Attorney General, Greg Stumbo also serves as a member of the Environmental Crimes Work Group and is chair of the Child Sexual Abuse and Exploitation Prevention Board, which oversees the Child Victims Trust Fund.

Attorney General Stumbo Fights the Methamphetamine Epidemic & Internet Narcotics in Kentucky

The first month Attorney General Stumbo took office, in January of 2004, he traveled to Oklahoma and met with Attorney General Drew Edmondson, the Oklahoma Bureau of Narcotics and the DEA to learn about new approaches to curbing Oklahoma's meth problem.

Legislation enacted in Oklahoma resulted in a 50 percent drop in meth labs from 2003 to the present. Lawmakers there adopted legislation to track and limit over-the-counter drugstore sales of cold and allergy medicines containing pseudoephedrine, a key ingredient for making meth, and cracked down on distributors of this ingredient.

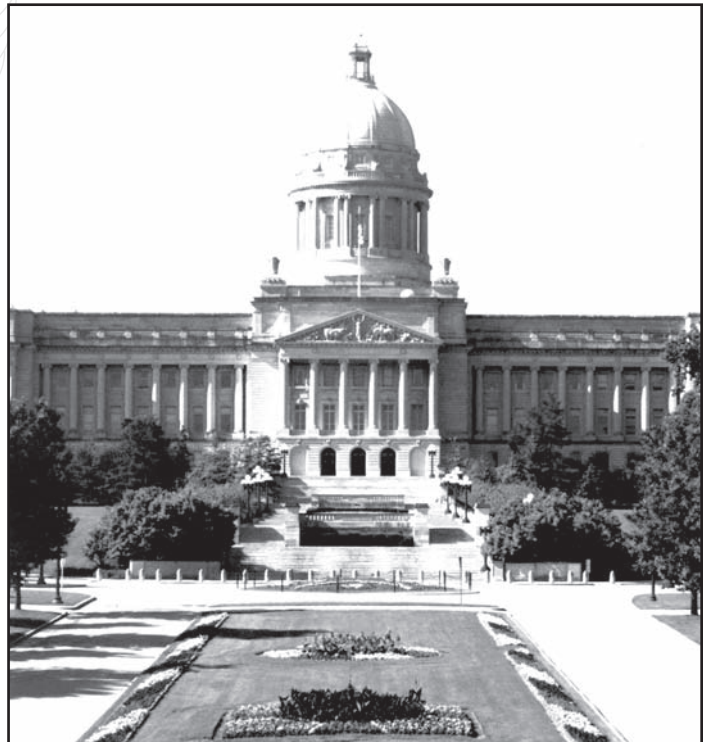
It was time for Kentucky to follow suit. Lawyers from the Office of the Attorney General put together recommendations drawn from the best laws across the nation. KBI investigators teamed up with the DEA to conduct surprise searches of precursor distributors. Attorney General Stumbo was on the job to combat methamphetamine, the most rapidly emerging threat to Kentucky, particularly in the rural areas of the state. The number of treatment admissions for meth abuse in Kentucky is greater than for any other illicit drug...rising as much as 42 percent over a two year period.

Frustrated by our present laws and determined to work in a bipartisan manner, General Stumbo joined the Statewide Drug Control Assessment Summit sponsored by Kentucky's Lieutenant Governor. He served on the Enforcement Committee. What developed was a strategic approach to fighting the drug epidemic facing the Commonwealth.

In 2005, Kentucky passed Senate Bill 63. This legislation, which became law in June, restricts access to over-the-counter drugs that contain pseudoephedrine. Customers in Kentucky now have to sign a log when purchasing the drug and are limited in how much they can buy per month.

The law increases penalties for people who expose children to meth labs and tightens laws to allow prosecution of people who possess some ingredients and equipment used to make meth. Senate Bill 63 also makes it tougher for people to buy illegal prescription drugs over the Internet. This initiative is being enforced by the Kentucky Bureau of Investigation and is producing results with the seizure of hundreds of drug shipments entering Kentucky from out of state.

The Internet Pharmacy Bill is one of the strongest in the nation. Whether it's the street-level manufacturing of meth or the purchase of drugs from rogue internet pharmacies, Attorney General Stumbo is making strides to control drug abuse and will continue to do so.



Consumer Protection Division

The Consumer Protection Division enforces the Kentucky Consumer Protection Act to protect the state's consumers and combat unethical businesses. In 2004, the Division handled more than 4,100 consumer complaints of which 2,169 were successfully resolved. It recovered more than \$11.5 million for the state's consumers and taxpayers through litigation and dispute resolution services. Of this amount, consumers received more than \$7.5 million in restitution, with \$487,834 obtained for civil penalties and \$3.7 million returned to the state (the bulk of which was recovered for the financially strapped Medicaid program).

In the first six months of 2005, the Mediation Branch opened 1,810 consumer complaints of which 1,432 were closed and 719 were successfully resolved. Consumers received more than \$181,372 in the form of refunds or goods and services. Litigation recoveries for consumers exceeded \$900,000, with an additional \$193,000 recovered for the State and more than \$23,000 in civil penalties collected.

In the area of consumer education, the Consumer Protection Division presented more than 120 educational programs, including Senior Crime Colleges and Senior Day Out, bank teller training seminars and presentations to civic groups, schools and conferences across the state between January 2004 and June 30, 2005. It coordinated the LifeSmarts quick recall competition for high school students in conjunction with other state agencies, the Better Business Bureau and 4-H program. In 2005, the state team placed second in the nation at the national LifeSmarts competition in San Francisco.

Top 10 Consumer Complaints January 2004 - June 2005


1. Internet Sales and Auctions
2. Debt Collection Agencies
3. Used Car Sales
4. Credit Card Companies
5. Finance & Loan/Mortgage Companies
6. Cellular Phone Service
7. Insurance Issues
8. Home Remodelers
9. Mail Order Companies
10. Computer Games/Software



Kentucky No Call Law


Attorney General Stumbo's Office has filed more than 100 enforcement actions and collected more than \$550,000 in civil penalties since the No Call law went into effect in July 2002. The program's effectiveness was evident in 2004 when the Federal Trade Commission ranked Kentucky as having the fewest telemarketing complaints per capita of any state in the country.

Average Wholesale Price Litigation



The Consumer Protection Division, along with the Medicaid Fraud and Abuse Control Branch, sued 41 Pharmaceutical manufacturers in 2004 alleging fraud and consumer protection violations based on their publication of false Average Wholesale Prices. This resulted in the state Medicaid program being charged hundreds of millions of dollars more for prescriptions than it should have if accurate prices had been reported. Litigation to recover these overpayments is ongoing.

Identity Theft Task Force



In 2005, Attorney General Stumbo drafted legislation to protect consumers against identity theft by creating a task force to review proposed legislation. Task force members include Commonwealth's Attorneys, County Attorneys, Circuit Court Clerks and representatives from the United States Secret Service, United States Attorneys Offices, the Federal Bureau of Investigation, Kentucky Chiefs of Police, Kentucky State Police and many other agencies. Identity theft is one of the fastest growing crimes in the nation. This proposed law incorporates the best practices for combating identity theft from around the nation including: security freezes to halt theft; protections for sensitive consumer information; reduced use of social security numbers in state government databases; new investigative procedures to aid law enforcement; new legal protections for victims of ID theft. This legislation will be presented to the 2006 General Assembly.

Noteworthy cases in 2004:

- **Bristol Myers Squibb** – The Consumer Protection Division settled lawsuits against this pharmaceutical manufacturer for antitrust violations in attempting to block generic competition for drugs Taxol and Buspar, resulting in a 2004 recovery of more than \$2.9 million for the state Medicaid program.
- **J.D. Byrider** - The Consumer Protection Division filed suit against this large used car franchisor and its Louisville-based franchise alleging a pattern of violations of state and federal consumer protection statutes related to its sales practices. These suits are ongoing, with the trial set to begin in March 2006.
- **Compact Discs** – The Consumer Protection Division obtained more than \$1 million worth of CDs for distribution to schools and libraries across the state as compensation in a settlement of price fixing charges against the music industry.
- **CHO/Revod** – The Consumer Protection Division recovered \$463,000 for victims of a phony Certificate of Deposit investment scheme.

Noteworthy cases January through June, 2005:

- **State Farm Insurance** - The Attorney General entered into a multi-state agreement with State Farm Mutual Insurance Company which will result in \$40 million in compensation to thousands of car, SUV and truck owners nationwide. The settlement was received after State Farm disclosed that it was unable to confirm paper titling of damaged or stolen vehicles. This resulted in consumers purchasing the cars for more than they were worth. Stumbo estimates that approximately 300 Kentucky consumers will recover more than \$500,000 under this agreement.
- **Green Farm Resort** - The Division filed suit against Texas developers of a golf resort/retirement community in Grayson County. The suit alleges multiple violations of the Kentucky Consumer Protection Act related to the developers' failure to complete necessary infrastructure and other improvements in the development. Following the filing of the suit, the Defendants agreed to deposit more than \$400,000 into an escrow account jointly overseen by the Defendants and the property owners in an effort to complete the project. This litigation is ongoing.
- **Yellow Pages, Inc.** - Suit was filed against Yellow Pages, Inc. for alleged violations of the Consumer Protection Act in connection with a billing scheme. Consumers were billed for Internet advertising without their consent, many through the use of a deceptive check which, if endorsed, purported to authorize billing for the advertising service. The action of Yellow Pages, Inc. allegedly failed to comply with Kentucky's live check solicitation statute requiring clear and conspicuous disclosure of such terms.
- **BMO Motor Scooters** – Suit was filed in Jefferson Circuit Court alleging violations of the Kentucky Consumer Protection Act in connection with mail order scooter sales. Sellers allegedly failed to honor warranties and misrepresented repairs covered under warranty. The Division received dozens of complaints from consumers reporting substandard merchandise and BMO's refusal to make repairs or refund the purchase price. The complaint asks the Court to compel BMO to honor its warranty, restitution for consumers and penalties for violations of the Consumer Protection Act.



Eleanor Jordan talks with seniors at a 2005 Senior Day Out in Louisville, KY.

Kentucky Bureau of Investigation

During September of 2004, Attorney General Stumbo created the Kentucky Bureau of Investigation. The KBI consolidated investigative staff into a single unit. It promotes the efficient management and coordination of law enforcement operations and training within the Office of the Attorney General.

The KBI is organized into the following branches:

Public Corruption/Special Investigations – Investigates allegations of public corruption by elected and appointed public officials; works closely with state prosecutors and the FBI; accepts requests for assistance from smaller agencies and county/commonwealths attorneys. Among the cases opened is that of a county employee who was indicted by the Scott County Grand Jury on 15 counts of Theft by Failure to Make Required Disposition of Property and three counts of Theft by Deception. The missing funds were related to Drug Court and ICOP (Intensive Criminal Probation) programs the employee had access to as part of her employment.

In May 2005, a case into alleged illegal merit hiring practices by Governor Fletcher's Administration was opened after an employee of the Transportation Cabinet brought extensive documentation to the Attorney General for review. A Special Grand Jury was empanelled to hear evidence in the case and the investigation is ongoing. The Special Grand Jury was also empanelled to hear evidence regarding welfare fraud by caseworkers within the Cabinet for Health and Family Services.

Medicaid Fraud and Abuse Control Unit – Certified by the Secretary of the United States Department of Health and Human Services, the Medicaid Fraud and Abuse Control Unit works to ensure the integrity of the Kentucky Medicaid Program through investigation and prosecution of healthcare providers who fraudulently bill or abuse the Medicaid system. It also investigates and prosecutes instances of abuse, neglect and exploitation of residents in nursing homes, Medicaid facilities or personal care homes. The Unit has statewide investigation and prosecution authority and operates on a "strikeforce" concept, utilizing investigators, auditors and attorneys working together to develop and prosecute such cases. The Unit receives case referrals from the Cabinet for Health and Family Services and from the public through its 1-877-ABUSE-TIP phone line. After conviction, the provider is often excluded from participation in the Medicare and Medicaid programs for a minimum of five years.

Drug Investigations – Investigates prescription fraud and abuse in Kentucky, prescription drug diversion, doctor shopping, methamphetamine precursor distributors and narcotics trafficking. This branch also monitors the prescription drug distribution system through KASPER and works collaboratively with the Federal Bureau of Investigation (FBI), the Kentucky State Police, the High Intensity Drug Trafficking Area (HIDTA) program, the Drug Enforcement Administration (DEA), Operation UNITE (Unlawful Narcotics Investigation, Treatment and Education) and other city and county law enforcement agencies throughout the state. The Drug Investigations Branch also coordinates with county and commonwealth's attorneys to help expedite prosecutions.

Fighting Internet Drugs:

The KBI has executed numerous successful undercover drug operations across the state, including the seizure of more than 220 packages (more than 15,000 illegal dosage units) of highly addictive drugs shipped into Kentucky from out of state. These drugs were sent by unlicensed Internet pharmacies and destined for towns across the Commonwealth. This new Internet drug enforcement strategy is made possible by recent Internet pharmacy laws backed by the Attorney General and sponsored by Representative Mike Weaver and Senators R.J. Palmer and Dick Roeding.



The ongoing success of this battle against illegal Internet drugs can be tracked on the Attorney General's website at www.ag.ky.gov where a list of licensed out of state Internet pharmacies is also maintained.

KBI's Mission

The mission of the Kentucky Bureau of Investigation is to provide the highest quality investigative and information services and resources to the Commonwealth, justice community and others, for the purpose of maintaining law and order and protecting life and property. The mission is achieved by a team of skilled and dedicated employees of the Kentucky Attorney General's Office, utilizing innovative programs and technology.

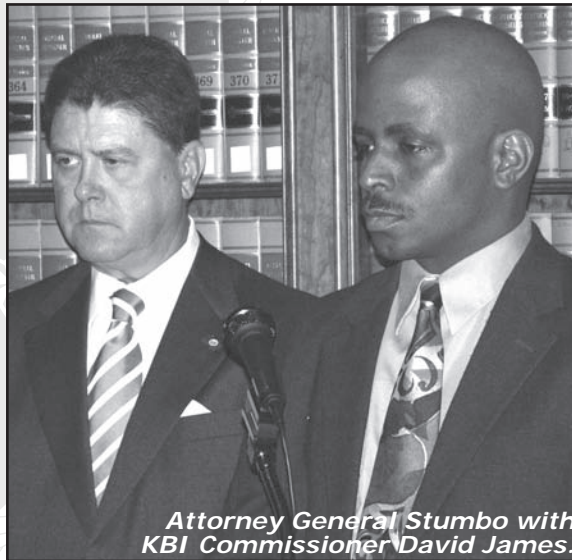
KBI Action Plan

KASPER Enforcement - KBI agents are expert at using the Kentucky All Schedule Prescription Electronic Reporting Act (KASPER) to detect prescription fraud and drug diversion. New applications of KASPER technology are now in place, thanks to legislation developed by Attorney General Greg Stumbo and Senator Dick Roeding.

Methamphetamine Precursor Investigation Team - KBI agents, in cooperation with DEA personnel, have formed a team devoted to the investigation of businesses licensed to sell precursor chemicals. Systematic audits ensure that illicit access to raw materials needed for the manufacture of methamphetamine is cut off. No state or federal law enforcement agency has ever undertaken a comparable law enforcement effort in Kentucky.

Medicaid Fraud and Abuse Control - the KBI includes agents specializing in the investigation of Medicaid fraud and abuse. These agents, working with OAG prosecutors, secured nearly 20 million dollars in Medicaid fraud recoveries

in fiscal year 2003-2004 and nearly 10 million in fiscal year 2004-2005. These totals are made up of criminal conviction recoveries, civil recoveries and reimbursement of KBI investigative costs. The KBI is designed to ensure that agents from its Drug Investigations and Special Investigations branches are on-call for any drug diversion cases found by the Medicaid Fraud and Abuse Control Unit. Since its inception, the KBI has opened 250 cases of medical assistance provider fraud.



Attorney General Stumbo with KBI Commissioner David James.

Elder Abuse Prevention - Our senior citizens are vulnerable to neglect and abuse. The Attorney General has established a toll-free hotline to report nursing home abuse, which is investigated by the Medicaid Fraud and Abuse Control Unit of the

KBI. That number is [877-ABUSE-TIP \(1-877-228-7384\)](tel:1-877-228-7384).

Public Corruption Investigations - Agents of the KBI maintain aggressive public corruption investigative policies. More than 100 cases of public corruption have been opened by the KBI.

Utility Rate Intervention

The Office of Rate Intervention serves as a watchdog for consumers in matters relating to health insurance, natural gas, water, sewer, electric and telephone rates. Under Kentucky law, the office is responsible for representing the interests of Kentucky consumers before governmental rate making agencies.

Noteworthy Cases:

Louisville Gas & Electric and Kentucky Utilities Companies

In December of 2003, the Office of Rate Intervention intervened in a case filed by Louisville Gas and Electric Company and Kentucky Utilities Company before the Public Service Commission (PSC). The companies were requesting a combined increase in excess of \$141 million.

In January 2005, the Office of Rate Intervention appeared in seven cases before the Public Service Commission in which citizens complained that companies were forcing landlords to pay utility bills of previous tenants before allowing services for new tenants. The Attorney General's Office argues that the contract for utility service is between the utility company and the tenant, not the landlord. Utility companies have also begun to retain commercial consumer security deposits as long as the customer remains a customer. The Attorney General is fighting this practice. Previously the company would return the deposit after three years as long as the customer remained in good standing.

Kentucky-American Water Company

In March 2004, Kentucky-American Water Company filed notice with the PSC of the Company's intent to increase water rates in order to generate approximately \$7.3 million of additional annual water revenues.

The Attorney General intervened in the action. Following a review of Kentucky-American's application and financial information, the Attorney General determined that the Company's application grossly overstated its need for additional revenue. The evidence supports an increase in rates of only approximately \$112,000.

A public hearing was held on the application in November 2004. Subsequently, the Attorney General submitted his briefs outlining his opposition to the rate increase and his recommendations for the PSC's review of Kentucky-American's application. As a result, the Commission only awarded a \$4.3 million increase, representing a savings of \$3 million to the public.

Delta Natural Gas Company

In April 2004, the Office of Rate Intervention intervened in a case by Delta Natural Gas Company, Inc., before the PSC. Delta, which serves 39,200 customers, requested an increase of approximately \$4.3 million, or 7.41 percent.

After reviewing the application and financial information, the Office of Rate Intervention determined that the request was excessive. The evidence would only support an increase of approximately \$1.4 million, in marked contrast to the Public Service Commission grant of an increase of \$2.75 million.

Western Kentucky Gas Company

In February 2005, the Office of Rate Intervention filed a complaint with the PSC requesting the Commission open a case on Western Kentucky Gas, also known as Atmos. The complaint states that Atmos is over-earning and should be required to lower rates by as much as \$7.4 million per year. The complaint is under review by the Commission.



Victims Advocacy

The rights of crime victims are the primary focus of the Victims Advocacy Division, which works under the principle that victims be treated with respect, dignity and compassion. The Division staffs the Crime Victim Information Line, a toll-free telephone line available to crime victims statewide. From 2004 to June 2005, resource and/or referral assistance was provided to 20,100 callers.

Under Kentucky law, the OAG is mandated to notify victims of crime that appeals have been filed. From January 2004 to June 2005, 1,740 notifications were made. Annually, the Attorney General's Office honors victims of crimes by hosting a Crime Victims' Rights Day rally and reception in cooperation with the nationally designated Crime Victims' Rights Week. Consistent with the 2004 theme, "Bringing Honor to Those Who Bring Honor to Victims," Attorney General Stumbo presented 7 Advocate Awards (ranging from judicial to prosecutor to legislative service fields) and two Lifetime Achievement Awards in honor of service to victims of crime. In 2005, nearly 400 people filled the Capitol Rotunda to hear featured speaker Trisha Meili, the Central Park Jogger, tell her story of victimization and survival.



Attorney General Stumbo with Trisha Meili at the Crime Victims' Rights Day rally.

By virtue of KRS 15.900, the Attorney General serves as chair of the Child Sexual Abuse & Exploitation Prevention Board. This Board administers the Child Victims' Trust Fund (CVTF) and is supported by revenue from the "I Care About Kids" license plate, the Kentucky income tax refund check-off program and private donations. The CVTF grants awards to organizations across the state that promote awareness of child sexual abuse prevention programs. In 2004, nine CVTF grants were awarded to organizations totaling \$158,964. This award included the statewide Promise Not to Tell Program, recently recognized by the National Educational Telecommunications Association (NETA) for its innovative training series to educate school personnel about recognizing abuse and addressing the effects of abuse on students.

In addition, the CSAEP Board provides reimbursement to regional child advocacy centers for a portion of the cost of child sexual abuse medical examinations not covered by Medicaid or private insurance. In 2004, these centers received reimbursement funding in the amount of \$138,825.

The Victims Advocacy Division also administers and monitors the Victim Advocacy Grant Program providing grant funding to subsidize salaries of community based victim advocates. Thirteen awards were made available in 2004 totaling \$424,761.



In May of 2004, ground was broken to erect the Kentucky Victims of Homicide Memorial which will serve as a lasting tribute to crime victims who prematurely lost their lives to crimes in Kentucky. The monument is located at Resthaven Memorial Park on Bardstown Road in Louisville. It was dedicated on November 10, 2005.

Civil and Environmental Law

Tobacco Master Settlement Agreement

In August 2005, the Office of the Attorney General prevailed in forcing tobacco companies to pay Kentucky money owed under the tobacco Master Settlement Agreement. Lead counsel for Kentucky, Assistant Attorney General Michael Plumley, successfully represented the Kentucky Settlement Trust Corporation. The North Carolina Supreme Court unanimously found in favor of Kentucky and 13 other tobacco-growing states by requiring the major tobacco companies to make their \$424 million 2004 payment under the terms of the National Tobacco Grower Trust Settlement Agreement.

The interest and penalties will increase the overdue payments to at least \$124 million, which is \$10 million more than the Kentucky General Assembly distributed to farmers. The Office will continue its aggressive strategy to recoup money owed to the people of the Commonwealth.

In the 1998 Master Settlement Agreement, the major cigarette manufacturers agreed to pay 46 states \$206 billion over 25 years. The following year, in a deal known as Phase II, they agreed to pay tobacco growers in fourteen states \$5.1 billion over 12 years to address economic impacts on tobacco-growing communities.



When Congress passed the \$10 billion buyout legislation last year, which will pay growers the equivalent of about five years of sales, the tobacco companies (Philip Morris, RJ Reynolds and Lorillard) argued that it ended their Phase II obligation and refused to pay for 2004. Since buyout payments had not yet started, many tobacco growers were adversely affected by the companies' actions.

The North Carolina Supreme Court found that the Trust Agreement did not allow the companies to avoid their obligation to pay tobacco farmers. The Court found unanimously that the purpose of the Phase II Trust was to provide tobacco growers "...a steady stream of supplemental income until at least 2010."

The Court concluded that the tobacco buyout was effective in 2005 and did not end the Trust payment requirements in 2004, as the companies had argued.

The Kentucky General Assembly passed a provision in early 2005 which made \$114 million in payments to Phase II growers in June. This appropriation will be covered by the payments ordered by the North Carolina Supreme Court.



KAPT

Parents of Kentucky school children may invest in their educational future by participating in the Commonwealth Postsecondary Prepaid Tuition Trust Fund (KAPT fund). Its goals are to provide affordable access to higher education and provide students with protection from

rising tuition costs. Attorney General Stumbo has taken decisive action to protect the rights of KAPT participants.

In 2005, Attorney General Stumbo petitioned the Franklin Circuit Court for a Declaration of

Rights and Injunctive Relief against the Board of Directors for the KAPT fund. The civil action arose from the operation of the biennial budget for the Commonwealth, HB 267, signed into law March 19, 2005. The budget bill requires that \$13,700,100 be taken from the KAPT fund and placed into the General Fund. It also prohibits transfers from the unclaimed property fund or the General Fund to the KAPT fund.

A temporary injunction was entered in the case in April 2005, prohibiting any transfers from the KAPT fund. The injunction remains in effect throughout the litigation. Investments in the KAPT program are protected by the court's order and the Attorney General will continue to ensure that the investments of our citizens are safe.

Litigation Branch

During 2004, the Litigation Branch of the Civil Division received 370 cases from 22 outside agencies in addition to handling litigation for the Office of the Attorney General. Of the cases received from other agencies, 275 were from the Cabinet for Health and Family Services for assistance in child support enforcement. From January through June of 2005 the Branch received 212 cases from 9 outside agencies of which 174 were requests from Cabinet for Health and Family Services for child support enforcement assistance. The Attorney General was able to help prosecute those actions.

Boards and Agencies Branch

The Boards and Agencies Branch currently provides representation for 44 independent Boards in addition to the Treasury. In addition to providing general counsel services for Boards and Agencies, branch attorneys prosecute administrative actions before the Boards and provide limited representation in state and federal Courts.

Environmental Protection

The Environmental Protection Branch represents the Attorney General on the Environmental Crimes Workgroup. The workgroup consists of other state agencies, the US Environmental Protection Agency and the US Attorneys Office. It meets to review, discuss and make recommendations concerning environmentally related cases. The Branch also serves as the Department of Fish and Wildlife's representative on the Mercury Task Force which meets to address Mercury Contamination throughout the state. The Branch also actively participates in the National Association of Attorneys General Environmental Section which reviews and advises on cases and legislation that may have national significance.

The Branch negotiated and reached a settlement agreement with DART Container Corporation in 2005. The settlement agreement resolved environmental violations consisting of discharges of contaminants into the Mammoth Cave-Green River System. In resolution of the alleged violations, DART agreed to pay \$325,000.

Opinions Branch

The Opinions Branch adjudicates open meetings and open records appeals, responds to general legal inquiries and drafts formal opinions of the Attorney General. From January 2004 through June 2005, 511 open meetings and open records appeals were received, of which 396 were adjudicated and resulted in formal Open Records Decisions and Open Meetings Decisions. Additionally, the Branch received approximately 426 requests for advisory opinions during that period. The Opinions Branch also takes telephone and e-mail requests from citizens and public officials seeking help with legal issues.

In 2004, there were more than 4,000 telephone and e-mail requests handled by the branch. Personnel from the Opinions Branch act as proxy for the Attorney General on the Grain Insurance Board, the Military Affairs Board, the Building, Housing and Construction Board, the Child Support Guidelines Review Committee, the Kentucky Housing Corporation, the Private Investigators Board, the Library and Archives Commission, and Charitable Gaming Advisory Commission. The attorneys in the Branch also attend meetings of the Kentucky Employees Mutual Insurance Authority in an oversight role on behalf of the Attorney General.



Opinions and Decisions are
available online at:
www.ag.ky.gov/opengov.htm

Open Records and Open Meetings

Dispute Resolution

The Office of the Attorney General continued to promote the ideals of open government in this biennium by issuing 360 open records decisions and 36 open meetings decisions. These decisions have the force and effect of law and are legally binding on the parties if not appealed to circuit court. In addition, the Attorney General mediated 115 open records and open meetings disputes to a successful conclusion, thereby reducing the need for the issuance of formal decisions. Noteworthy open records decisions (ORD's) issued by the Attorney General under the provisions of KRS 61.880 included decisions:

- affirming a public's right of access to breast cancer incidence statistics, not descriptive of any readily identifiable person, maintained by a university (04-ORD-077);
- upholding a university's denial of a request for football team practice tapes as an unreasonable burden, necessitating a revision of the team's strategy, tactics, and plays each time an open records request is submitted (04-ORD-058);
- recognizing the superior public interest in the tape recording of a 911 call placed by a student on a school bus that captured the responses of the bus driver, the 911 operator, and the police in the discharge of their official duties (04-ORD-161);
- affirming the public's right of access to police incident reports in the absence of proof of any heightened privacy interest on the part of the complainants (04-ORD-188);
- declaring that a university's nondisclosure of donations by a named corporation was unsupportable where the corporation did not condition the donations on nondisclosure of its identity and promoted its activities as a donor on its corporate website (04-ORD-197);
- implementing existing case law by recognizing the Governor's right to withhold his schedule, appointment ledger, calendar, and/or personal itinerary (05-ORD-018);
- determining that a public agency improperly withheld that portion of a record containing the name of a complainant who requested removal of political signs from a public right of way (05-ORD-030);
- affirming an agency's denial of a request for autopsy photographs as a clearly unwarranted invasion of the privacy rights of the victim's surviving family members (05-ORD-075);
- recognizing the public's right to inspect emails exchanged by state officials that do not qualify as preliminary drafts, notes, or correspondence with private individuals, and do not contain opinion, recommendation, or policy formulation (05-ORD-144).

In each of these decisions, the Office of the Attorney General attempted to strike a reasonable balance between the public's right to know and the need for personal privacy or governmental confidentiality.

Noteworthy open meetings decisions (OMD's) issued by the Attorney General under the provisions of KRS 61.846 included decisions:

- affirming the public's right to videotape a school board meeting (04-OMD-102);
- implementing existing case law by finding that the time and place for a public meeting was not so inconvenient as to effectively render public knowledge or participation impossible (04-OMD-145);
- determining that a public agency violated the Open Meetings Act by modifying the draft minutes of a public meeting in such a manner that the minutes no longer contained "an accurate record of votes and actions taken" at the meeting (04-OMD-179);
- declaring that a public agency violated the Open Meetings Act by conducting a series of less than quorum telephonic meetings to reach a consensus on a loan agreement proposal (05-OMD-026);
- upholding a closed session discussion of the dismissal of a student government association member (05-OMD-086).

In each of these decisions, the Attorney General demonstrated his commitment to ensuring the public's right to monitor the meetings of public agencies.

Helping Public Officials Understand Open Records and Open Meetings Law

In addition to discharging the dispute resolution duties assigned to his Office since 1976, the Attorney General assumed a new open records and open meetings responsibility in this biennium. Under HB 77, enacted by the General Assembly in the 2005 Regular Session, the Attorney General is required to distribute to all county judge/executives, mayors, county attorneys, city attorneys, superintendents of public school districts, school district attorneys, presidents of postsecondary educational institutions and university counsel, written information prepared by his Office explaining the procedural and substantive provisions of the Open Meetings Act and Open Records Act, along with information prepared by the Department for Libraries and Archives concerning proper retention and management of public records. The goal of this legislation is to assist the public officials of Kentucky in complying with these laws.

On September 15, 2005, the Attorney General disseminated the referenced materials to more than one thousand public officials, and instructed the officials on their statutory obligation to ensure further dissemination to elected and appointed officials within their respective jurisdictions and to obtain signatory proof of distribution and receipt.

The Attorney General continued his efforts to promote public awareness of, and public agency compliance with, the Open Records and Open Meetings Acts by participating in continuing education programs, revising and distributing publications dealing with these topics, maintaining a website on which open records and open meetings decisions are regularly posted and can be accessed, and responding to telephone inquiries from members of the public, as well as state and local officials.



From left, attorneys Amye Bensenhaver, Michelle Harrison, Jim Ringo, and Attorney General Greg Stumbo

Landmark Case: Supreme Court Rules in Attorney General's Favor in State Budget Lawsuit

In May 2005, The Kentucky Supreme Court upheld Attorney General Stumbo's challenge to Governor Fletcher's spending plan. On April 13, 2004, for the second time in three years, the Kentucky General Assembly adjourned its regular session without adopting a budget for the Executive Branch of state government for the 2004-2006 biennium. In contrast to his predecessor, Governor Ernie Fletcher refused to call a special session of the General Assembly in an attempt to resolve the budget crisis. Rather, the Governor announced that he would set up his own executive spending plan to operate state government in the 2004-2006 biennium.

The Attorney General filed a Petition for Declaration of Rights in the Franklin Circuit Court on May 27, 2004, identifying 153 statutes that would be suspended by the Governor's plan. The Attorney General stated that his objectives were to:

1. Ensure the orderly and lawful continuation of state services to the citizens of the Commonwealth.
2. Avoid a multitude of lawsuits challenging the legality of the Governor's Executive Spending Plan.
3. Obtain a clear court ruling to prevent future budget deadlocks.
4. Protect the checks and balances that are the foundation of our representative form of government.

On December 15, 2004, the Franklin Circuit Court issued its opinion. The Court held "the failure of the General Assembly to appropriate collective revenue for public use to be a violation of Section 230 of the Kentucky Constitution. Moreover, the Governor has no power to spend state funds without an appropriation from the legislative branch." The Court ordered that, absent any legislative action, upon the expiration of the spending plan on June 30, 2005, no further public funds could be expended from the state treasury with the exception of those demonstrated to be essential services that had been previously approved.

Within one month the Governor and several intervenors filed Notices of Appeal to the Kentucky Supreme Court. By Order dated February 4, 2005, the Supreme Court granted the motion.

In a court challenge, *Fletcher v. Commonwealth of Kentucky, Ex Rel. Gregory D. Stumbo*, the court noted that "the Attorney General initiated this action to prevent the Governor's anticipated suspension of 153 statutes," and found that "the Governor could not suspend statutes even if he possessed 'emergency' or 'inherent' powers. . . ."

In the May 19, 2005 ruling, the Court firmly declared that "[t]he suspension of statutes is antithetical to the constitutional duty to 'take care that the laws be faithfully executed' . . . [and] the suspension of any statutes by the Governor's Public Services Continuation Plan was unconstitutional and void. . . ." The Attorney General's central goal in filing the legal challenge, to protect the separation of powers underlying our democratic form of government, was fully achieved.

Because of the Attorney General's action in bringing this lawsuit, laws will never again be suspended by a Governor, and public money will be spent only after action by the Legislature to establish a proper budget.



Administrative Hearings

The Division of Administrative Hearings is assigned several areas of responsibility by KRS 15.111, with the Division's two major responsibilities being:

1. to maintain a pool of hearing officers, with the necessary support staff, for conducting administrative hearings for government boards and agencies;
2. to provide training in administrative hearing procedures for hearing officers, either by developing and offering the training, contracting with appropriate organizations for the provision of training or approving training developed and submitted by the agencies.

The Division currently provides hearing officer services to more than 60 government agencies and boards. These services include conducting pre-hearing conferences, ruling on motions, conducting hearings and writing findings of fact, conclusions of law and recommended and final orders. The Division's hearing officers have received specialized training in handling all aspects of administrative hearings.

The Division provides mediation services to government boards and agencies, recognizing that some cases can be more effectively resolved through mediation. The Division's mediators are hearing officers with specialized training in mediation.



In addition, the Division develops and provides hearing officer and related training at least once each year, which it has done since 1996. Also, the Division approves other training programs related to administrative hearings for hearing officer training credit.

Hearing officer and mediator services are provided at the request of government boards and agencies. Government boards or agencies interested in obtaining these services from the Division, or requesting additional information regarding these services, can contact Peggy Riddle, the Division's docket clerk, at 502-696-5436. Private citizens who believe they are entitled to an administrative hearing should contact the government agency or board involved; only that government agency or board can respond to a request for a hearing.

The Division provided six hearing officer training opportunities in 2004 and the first six months of 2005. Special Training is also provided to individual Boards as requested.

January 2004 - June 2005:

Agency Hearing Requests.....	806
Mediation Requests	68
Total Hearing Officer Billings.....	\$460,850
Total Income from training	\$28,850

Medicaid Provider Fraud and Patient Abuse Control

The Attorney General's Medicaid Fraud and Abuse Control Division is jointly funded by state and federal government. This law enforcement agency investigates and prosecutes provider fraud and misconduct in the Medicaid program. In addition to investigating medical services fraud in the health care industry, the Division also investigates allegations of elder abuse and neglect in Medicaid-funded facilities.

Kentucky's Medicaid Fraud Unit benefits from a close working relationship with many different agencies, including the Cabinet for Health and Family Services' Office of Inspector General, the Department for Medicaid Services and the Department for Community Based Services (adult protective services) from which it receives hundreds of referrals each year.

The Unit works closely with the Department for Health and Human Services' Office of Inspector General, the Offices of the United States' Attorneys and the FBI. The Unit also works with nursing home ombudsman personnel, physicians, nurses in case management and nursing home employees and owners. The public remains an important component of the Unit's operation.

From January 2004 through June 2005, the Unit obtained 24 indictments, ten convictions and eight settlements. Among these is Kindred Healthcare. After several of Kindred Healthcare, Inc.'s nursing homes received multiple Type A citations from the state's licensing arm due to significant patient care failures, Medicaid Fraud reached an administrative settlement with the corporation requiring it to repay the Kentucky Medical Assistance Program (Medicaid) more than \$350,000 it had been paid for patient care. The settlement also paid \$500,000 to the Kentucky Nursing Incentive Scholarship Fund, repaid more than \$96,000 for the costs of the investigation and agreed to spend more than \$300,000 a year to enhance and improve training for its care staff. Kindred's total cost for this settlement is \$3,684,605.29.

The Medicaid Fraud and Abuse Control Division works closely with other states' Medicaid Fraud Units and with the National Association of Medicaid Fraud Control Units in Washington

DC to investigate and prosecute multi-state fraud. Through these cooperative efforts, often referred to as "Global" cases, millions of dollars are returned to state and federal budgets.

The total amount Kentucky recovered in Global cases from January 2004 through June 2005 was \$18,712,239.12, out of which \$6,276,702.13 was returned to the state Medicaid program. In addition, Medicaid prosecutors and investigators with the Office of the Attorney General reached state settlements and court orders for recovery of more than \$3.8 million in healthcare improvements, restitution and penalties for the Kentucky Medicaid program. Total recoveries from January 2004 through June 2005 were \$22,595,826.23.

In July of 2004, Attorney General Stumbo announced a new toll-free tip line for reporting fraud and abuse, [1-877-ABUSE TIP \(1-877-228-7384\)](tel:1-877-ABUSE-TIP), to assist the Office in carrying out its duties to guard the public, and particularly the elderly, from unscrupulous Medicaid providers and abusive caretakers.



From January 2004 through June 2005 the following cases were settled:

Bayer - In January 2004, the Bayer Corporation settled allegations of violating federal Medicaid rebate law involving the privately labeled drug Cipro for Kaiser Permanente. Settlement Amount: \$7,034,463.77

HCA, Inc. Columbia - Also in January 2004, HCA, Inc. Columbia settled allegations regarding reimbursement from representatives of government healthcare programs for costs incurred as a result of treating program beneficiaries. Settlement Amount: \$1,870,057.76

RITE AID - In June 2004, RITE AID entered into a Global agreement to settle allegations of dispensing partial prescriptions but receiving full payment from government health insurance programs. Settlement Amount: \$417,753.32

Schering-Plough - In October 2004, Schering-Plough settled allegations that they underpaid Medicaid drug rebates for the antihistamine drug Claritin. Settlement Amount: \$5,772,148.97

Wal-Mart - In December 2004, Wal-Mart settled claims involving partially filled prescriptions. Settlement Amount: \$69,756.42

Warner-Lambert/Pfizer Corporation - In March 2005, Warner-Lambert/Pfizer Corporation settled a multi million dollar fraud case for illegal practices and marketing of the drug Neurontin. Settlement Amount: \$3,336,408.89

AstraZeneca Corporation - In April 2005, AstraZeneca settled claims that the company gave the drug Zolodex to doctors knowing they would bill the Medicaid program, adversely affecting average wholesale pricing. Settlement Amount: \$211,649.99



Attorney General Stumbo talks with patrons of a Winchester, KY convenience store.

© James Mann / The Winchester Sun

Prosecutors Advisory Council

The duties of the Prosecutors Advisory Council (PAC) are codified in KRS 15.700 - 15.770. The nine-member Council meets every other month and is comprised of the Attorney General, as chairperson, and three Commonwealth's Attorneys, three County Attorneys and two citizens, all appointed by the Governor. The Council's staff members make up a division in the Attorney General's Office. The division handles the financial administration of the Unified Prosecutorial System, which is comprised of 177 Commonwealth's and County Attorneys and their staffs. The division's duties include the administration of the budget, purchasing, inventory, leasing, grants, personnel, payroll, information resources, data collection, training and prosecutor assistance.

In 1996, the Division worked with the Commonwealth's and County Attorneys Associations to pass legislation that provided for full-time funding for Commonwealth's Attorneys who requested permission to convert their offices to full-time status. As a result, 51 out of 57 Commonwealth's Attorneys' offices operate on a full-time basis. This is a great benefit to citizens who are assured of professional, full-time prosecutorial services.

The Prosecutors Advisory Council Division sponsors the annual Kentucky Prosecutors Conference, which is attended by more than 600 prosecutors and other law enforcement officials. It also sponsors the Kentucky Prosecutors Institute, which was established by the Attorney General's Office and the Prosecutors Advisory Council in 1999 in conjunction with the University of Kentucky College of Law. The institute provides an annual intensive, week-long trial skills course to train new prosecutors. The Division also provides Basic Training Courses for newly elected Commonwealth's and County Attorneys.

The Prosecutors Advisory Council Division prepares the Child Sexual Abuse Prosecution Manual and the Data Collection Report. KRS 15.706 also requires the PAC to collect data on child sexual abuse cases in the Commonwealth and compile the information collected in an annual report. PAC, with the assistance of the Kentucky Multidisciplinary Commission on Child Sexual Abuse (Commission), has created an electronic system for collecting this data. Commonwealth's and county attorneys and local multidisciplinary teams on child sexual abuse enter data on the child sexual abuse cases they prosecute and/or review into the Child Sexual Abuse Data Tracking System. The online system, accessible through a secure Internet site, is maintained by PAC. PAC uses the data entered into the tracking system to generate an annual report.

The 2004 report will be released to the Commission in December 2005. The data reveals 2,289 cases were opened in 2004. Six hundred and twenty-one of the cases opened were felony cases, 84 were misdemeanor cases and 62 were juvenile cases.

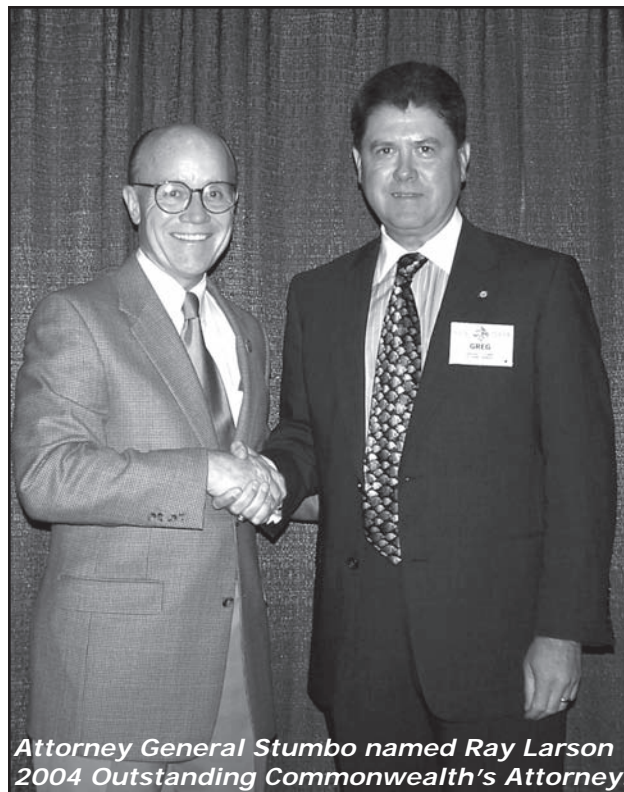
"As the Kentucky General Assembly examines ways to solve the state's current fiscal crisis, including options such as expanded gaming or increasing the cigarette tax, the General Assembly should take a hard look at increasing the funding levels of our state prosecutors. Government's most important function is the protection of the public safety. Without safe communities, we cannot progress in other important areas. Our County and Commonwealth's Attorneys work tirelessly to maintain the safety of our communities and our Commonwealth. Their work is too difficult and too important to suffer from a lack of financial support."

- Attorney General Greg Stumbo

Blue Ribbon Commission

During 2004, Attorney General Stumbo formed a bipartisan Blue Ribbon Commission to study the lack of resources that prosecutors face which threatens their ability to effectively safeguard the public. With the assistance of prosecutors and the Prosecutors Advisory Council, the Attorney General issued a report from the Blue Ribbon Commission. The report notes that while prosecutor caseloads have increased dramatically, the resources devoted to the Prosecutorial System have not increased at a corresponding rate.

The Blue Ribbon Commission Report on Criminal Prosecution noted that prosecutors are handling 10,000 more criminal cases in circuit court than they did in 1996. Much of this increase is due to an exponential increase in drug crimes, particularly methamphetamine cases. Methamphetamine labs in Kentucky have been found everywhere from the trunks of cars to underground caves. Indictments for methamphetamine manufacturing and trafficking have increased by a staggering 452% from 1998. In some criminal circuits, methamphetamine cases represent 15-30% of the entire criminal caseload. This caseload increase has added to the burden of our



**Attorney General Stumbo named Ray Larson
2004 Outstanding Commonwealth's Attorney.**

overtaxed County and Commonwealth's attorneys. Most of the prosecutors are handling cases in numbers that are well above recommended levels. In addition to facing these challenges, prosecutors are also addressing demographic shifts that affect how they concentrate their limited resources. Prosecutors are adapting to changes in our society in positive ways. For example, as our population continues to age, prosecutors are devoting more and more time to protecting our elderly citizens. Many of our seniors have been victimized either by physical abuse or by financial scams that strip them of their savings. In the 2005 session, the General Assembly passed House Bill 298, a bill designed to combat elder abuse. This bill requires the Attorney General's Office to prepare an elder abuse prosecution manual, and the Prosecutors Advisory Council to train prosecutors in the area of elder abuse. These two efforts are currently underway and will give prosecutors additional guidance in this area and help them to continue their important efforts in combating abuse of the elderly.

Child Support Enforcement Commission

The Child Support Enforcement Commission was established pursuant to KRS 15.290 to advise the Governor on child support enforcement issues. It also serves as a forum to foster increased cooperation among the agencies involved in the delivery of child support services. Public education efforts continue to be a most important tool in child support enforcement. Major expansion on the Child Support Enforcement Commission's website (www.ag.ky.gov/childsupport) provides 24-hour information access regarding child support.

From January 2004 through June 2005, the Child Support Enforcement Commission received nearly 4,000 citizen requests seeking information or assistance in child support cases.

The Commission's investigator project, implemented in April of 1998, in cooperation with the Kentucky Division of Child Support, continues to be a success. The project employs investigators who facilitate child

support service of processes when attempts by local officials have been unsuccessful or when a non-custodial parent is particularly evasive. In addition, the investigators examine hidden assets and wages.

From January 2004 through June 2005, more than 4,500 children benefited from this program.



Special Prosecutions

One of the primary functions of the Special Prosecutions Division is to fulfill the Attorney General's duty to serve as a local prosecutor when a local disqualification is required. This division also investigates and prosecutes election fraud and environmental crimes. On the Attorney General's Election Fraud Hotline, [1-800-328-VOTE](tel:1-800-328-VOTE), 161 complaints were handled during 2004.

Notable Cases in 2004:

- Commonwealth vs. Adele Craven, Kenton Circuit Court: Defendant sentenced to Life Without Parole for 25 Years on Murder based on guilty plea. Defendant was charged in connection with murder for hire of her husband.
- Commonwealth vs. William Harry Meece, Adair Circuit Court: Defendant entered pleas to three counts of Murder, 1st Degree Robbery and 1st Degree Burglary and took a sentence of Life Without Parole for 25 years. His co-defendant, Meg Wellnitz Appleton, then entered pleas to the same charges and was sentenced to Life Without Parole for 25 years.

Notable cases from January-June, 2005:

- Franklin County Special Grand Jury Investigation regarding the Kentucky Transportation Cabinet/Cabinet for Health and Family Services: The Franklin Circuit Court granted the Office of Attorney General's Motion to empanel a special grand jury to conduct an investigation into: (1) Alleged violations of Kentucky's Merit Employee hiring laws as set forth in KRS Chapter 18A and (2) Allegations of systemic deficiencies in the state welfare system resulting in state case worker fraud within the Cabinet for Health and Family Services.



Attorney General Stumbo with the Director of the Special Prosecutions Division, Scott Crawford-Sutherland.

Criminal Appellate

The Office of Criminal Appeals fills the legislative requirement that the Attorney General appear for the Commonwealth in all criminal appeals in which the Commonwealth has an interest in both state and federal courts. The Office also advises elected prosecutors on legal issues, assists in prosecutor training, reviews the merits of appeals or requests for certification by prosecutors and participates in amicus curiae brief efforts by other states.

In addition, since July 1, 1996, through the Office of the Attorney General's project to expedite death penalty post-conviction litigation, significant progress has been made in moving a number of capital cases which previously had been stalled at the state post-conviction level.

In 2004, the Office of Criminal Appeals wrote 842 briefs which included 2,497 issues in all courts. Incorporated within were nine separate briefs with 17 issues before the United States Supreme Court. The Office also participated in more than 300 motions or responses for discretionary review in the Kentucky Supreme Court with 385 separate issues involved. Attorneys for the Office appeared in 52 oral arguments in cases involving 502 issues before the courts.

The Office also responds to requests from prosecutors for assistance in both trial work and post-conviction matters. Ninety requests were received from prosecutors relating to 143 issues. In the first six months of 2005 there were 88 requests for assistance.

During the year, the Kentucky Court of Appeals and Supreme Court issued 696 opinions in cases handled by this Office. In 578 of those

opinions the Commonwealth prevailed. In 118 opinions the opposing side prevailed, giving the Commonwealth of Kentucky a winning percentage of 83.05%. Of those opinions, 232 were from the Kentucky Court of Appeals and 164 from the Kentucky Supreme Court.

In the first six months of 2005, the Office received 722 new cases, wrote 353 briefs concerning 1092 issues and participated in ten oral arguments. That includes 174 briefs before

the Kentucky Court of Appeals, 87 briefs before the Supreme Court of Kentucky, 23 before the Sixth Circuit U. S. Court of Appeals and three before the United States Supreme Court.

The courts have issued 384 opinions on cases briefed and argued by the Office, ninety-seven by the Supreme Court of Kentucky and the remainder by the other courts. The Commonwealth prevailed in 320 of those cases for a winning percentage of 83.3%.

The Sixth Circuit U.S. Court of Appeals ruled on two Kentucky

death penalty cases in 2004, affirming both of them. Ralph Baze ambushed and murdered two Powell County policemen as they were trying to arrest him on several Ohio felonies, including a charge of feloniously assaulting a Toledo policeman with a deadly weapon. Baze was sentenced to death for the execution-style murder of both Powell County officers.

Thomas Clyde Bowling murdered a young married couple outside of their Lexington dry cleaning business. The Sixth Circuit affirmed his death sentences for both murders. During the same criminal episode, Bowling also had shot and wounded the couple's two-year-old son.



Baze's and Bowling's executions are the next to be conducted in Kentucky. At present, both of these condemned murderers are challenging lethal injection as a means of execution in state court proceedings. Both of these convicted killers contend the lethal injection process might cause momentary pain. The Franklin Circuit Court recently ruled that lethal injection is not cruel and unusual punishment. That ruling though, has been appealed to the Supreme Court of Kentucky, further delaying the carrying out of the death sentences.

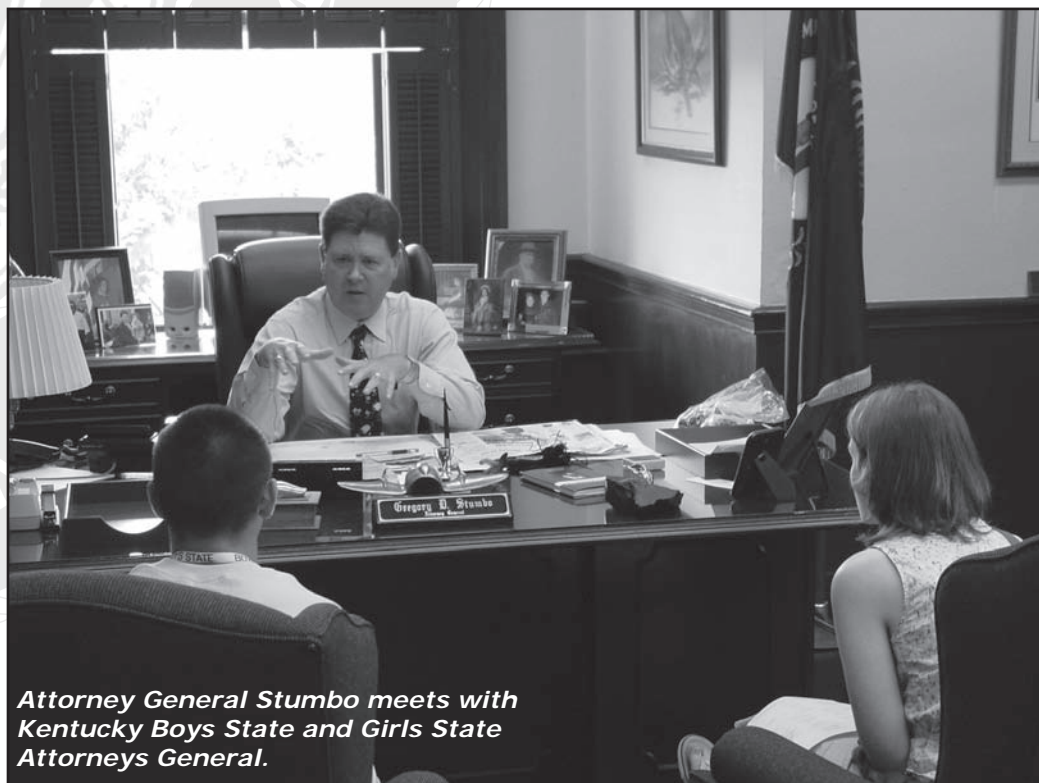
In *Commonwealth v. Morris*, the defendant wantonly drove his pickup truck into another vehicle that was carrying an expecting mother to the hospital to give birth. Because the force of the collision caused the death of both the mother and her baby just before her birth, the local Grand Jury charged the defendant with two counts of homicide. But, following previously established Kentucky law, the Kentucky Court of Appeals dismissed the homicide count that pertained to the death of the unborn child. In response, the Attorney General sought discretionary review to the Supreme Court of Kentucky and persuaded the Court to overturn its prior rulings preventing a defendant from being criminally charged for the death of an

unborn child under any circumstances. As a result, under Kentucky common law as it now stands, a person who criminally causes the death of a viable, unborn child may be prosecuted for homicide.

The Supreme Court of Kentucky granted the Attorney General's Petition for Rehearing in *Commonwealth v. Ragland* relating to the claim of prosecutorial misconduct. The Court heard oral arguments on that issue in November, 2005.

The Supreme Court of Kentucky in *Commonwealth v. Mobley* reversed a longstanding rule of law and made it much easier for police officers to arrest drug dealers during the commission of misdemeanors.

Division attorneys convinced the United States Supreme Court (Washington DC) to overrule the United States Court of Appeals for the Sixth Circuit located at Cincinnati, Ohio in the case of *Quintero v. Bell*. The case was reconsidered by the Cincinnati federal appeals court and the Office for the second time has appealed the case to the United States Supreme Court. The case is still pending in Washington DC.



Attorney General Stumbo meets with Kentucky Boys State and Girls State Attorneys General.

General Administration & Support

The General Administration and Support Division administers the budget and supervises purchasing procedures for the Office of the Attorney General. The Office is dependent upon this Division for administrative and specialized support necessary to its daily operations. The division is responsible for fiscal and purchasing operations, for computer and electronic data maintenance, personnel management and employee training.

Field Offices

To increase access to the Office of the Attorney General throughout the Commonwealth, Attorney General Stumbo has opened four field offices. Satellite offices were opened in Benton, Maysville, Prestonsburg and Shively. Each office employs a full-time staff member to assist citizens with all services of the Office of the Attorney General. In addition, the office in Prestonsburg is staffed with a full-time sworn agent of the KBI who focuses primarily on narcotics investigations.



Attorney General Stumbo opens the office in Prestonsburg with a ribbon-cutting ceremony.

Prestonsburg Field Office
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Maysville Field Office
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